IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION No. 5:14-CR-55-D

UNITED STATES OF AMERICA)	
v.)	ORDER
RICARDO HERNANDEZ-AGUILAR,)	
Defendant.)	

On June 2, 2014, Ricardo Hernandez-Aguilar ("Hernandez-Aguilar") pleaded guilty to illegal entry by an aggravated felon in violation of 8 U.S.C. § 1326(b)(2). See [D.E. 21]. On September 3, 2014, the court held Hernandez-Aguilar's sentencing hearing. See [D.E. 28]. At the hearing, the court adopted the facts set forth in the Presentence Investigation Report ("PSR"). See id.; Fed. R. Crim. P. 32(i)(3)(A)-(B). The court calculated Hernandez-Aguilar's total offense level to be 21, his criminal history category to be II, and his advisory guideline range to be 41–51 months. See [D.E. 30] 1. After thoroughly considering all relevant factors under 18 U.S.C. § 3553(a), the court sentenced Hernandez-Aguilar to 36 months' imprisonment. See [D.E. 29].

On June 22, 2016, Hernandez-Aguilar moved for a six-month sentence reduction. See [D.E. 32]. In support, Hernandez-Aguilar cites United States v. Smith, 27 F.3d 649, 650 (D.C. Cir. 1994), and 18 U.S.C. § 3624(c) and argues that because he is an illegal alien, he cannot receive the benefit of community re-entry programs under 18 U.S.C. § 3624(c). See id. Thus, according to Hernandez-Aguilar, equity requires a six-month sentence reduction. See id. On July 28, 2016, the government responded in opposition [D.E. 36].

Hernandez-Aguilar is not entitled to a sentence reduction. See 18 U.S.C. § 3582(b), (c); United States v. Goodwyn, 596 F.3d 233, 235 (4th Cir. 2010). Smith does not apply to Hernandez-

Aguilar because all defendants convicted under 8 U.S.C. § 1326 are ineligible for community re-

entry programs. See, e.g., United States v. Martinez-Ramos, 184 F.3d 1055, 1058-59 (9th Cir.

1999). Moreover, Hernandez-Aguilar is not eligible for relief under 18 U.S.C. § 3624(c), and section

3624(c) does not override the finality of Hernandez-Aguilar's final judgment. See United States v.

Salguero-Ortiz, 483 F. App'x 858, 864 (4th Cir. 2012) (per curiam) (unpublished); Goodwyn, 596

F.3d at 235.

In sum, the court DENIES Hernandez-Aguilar's motion for reduction of sentence [D.E. 32].

SO ORDERED. This 31 day of October 2016.

IAMES C. DEVER III

Chief United States District Judge

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